Green Country Casting Corporation *and* International Association of Machinists and Aerospace Workers, AFL-CIO. Case 16-CA-8900

June 9, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On October 19, 1981, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Green Country Casting Corporation, Muskogee, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Administrative Law Judge's recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) Announcing or maintaining a rule prohibiting employees from engaging in union-related conversations at any time on company premises."

2. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from its files any reference to the failure to recall the above-named employees, and notify them in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them."

3. Substitute the following for relettered paragraph 2(c):

"(c) Rescind the rule prohibiting employees from engaging in union-related conversations at any time on company premises."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT fail or refuse to accord all economic strikers the reinstatement rights to which they are entitled.

WE WILL NOT announce or maintain a rule prohibiting employees from engaging in union-related conversations at any time on company premises.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under the Act.

WE WILL offer to Mike Branchcomb, Joe Dority, Rocky Eslinger, Dan Hamon, Ricky Hamon, Fred Hawkins, Billy Hughes, Willie Underwood, and Theodore Wallace immediate

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[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In adopting the Administrative Law Judge's conclusions that Respondent violated Sec. 8(a)(3) and (1) of the Act by failing and refusing to recall the nine strikers, Chairman Van de Water and Member Hunter agree with the Administrative Law Judge's findings that Respondent failed to supply legitimate and substantial business justifications for its conduct under *N.L.R.B.* v. *Fleetwood Trailer Co.*, 389 U.S. 375 (1967), and that Respondent's conduct was motivated by the strikers' union activity. Accordingly, they find it unnecessary to pass on the Administrative Law Judge's additional finding that Respondent's conduct was motivated by the strikers' filing of workmen's compensation claims and on his reliance on *Krispy Kreme Doughnut Corp.*, 245 NLRB 1053 (1979), enforcement denied 635 F.2d 304 (4th Cir. 1980).

We hereby amend the Administrative Law Judge's Conclusion of Law 2, as follows, to conform more closely to the violation found:

"2. By announcing or maintaining a rule prohibiting employees from engaging in union-related conversations at any time on company premises, Respondent violated Section 8(a)(1) of the Act."

We shall modify the Administrative Law Judge's recommended Order accordingly.

[3] We shall modify the Administrative Law Judge's recommended Order so as to require Respondent to expunge from its files any reference to its failure to recall the nine strikers, and to notify them in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them. See *Sterling Sugars, Inc.*, 261 NLRB No. 71 (1982).

and full reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole, with interest, for any loss of earnings resulting from the failure to offer such reinstatement to Branchcomb, Dority, both Hamons, Hughes, and Wallace on January 14, 1980, to Hawkins and Underwood on January 24, 1980, and to Eslinger on September 8, 1980.

WE WILL expunge from our files any reference to our failure to recall the above-named employees, and WE WILL notify them in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them.

WE WILL rescind the rule prohibiting employees from engaging in union-related conversations at any time on company premises.

GREEN COUNTRY CASTING CORPORATION

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This case was heard before me in Muskogee, Oklahoma, on September 30 and October 1, 2, 3, 16, and 17, 1980. The charge was filed on January 18, 1980, and twice amended, by International Association of Machinists and Aerospace Workers, AFL-CIO (herein called the Union). The complaint issued on April 15, alleging that Green Country Casting Corporation (herein called Respondent) had violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act, on January 10, 1980, by promulgating "an overly broad" no-solicitation rule, and had violated Section 8(a)(3) and (1) on and after that same date by failing to recall nine ex-strikers.

I. JURISDICTION

Respondent is an Oklahoma corporation engaged in the manufacture of steel castings in Muskogee. It annually purchases goods and materials of a value exceeding $50,000 directly from suppliers outside Oklahoma.

Respondent is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGEDLY UNLAWFUL FAILURE TO RECALL

A. *Evidence*

Respondent and the Union were party to a collective-bargaining contract that expired October 31, 1979. About 100 production and maintenance employees were then in the bargaining unit. Starting November 1, numerous of the unit employees failed to report for work, presumably in aid of the Union's position in the negotiation of a new contract,[1] and picketing began November 5.

On January 9, 1980, the strikers having voted to discontinue the strike, the Union informed Respondent that they "are returning to work unconditionally." Respondent since has offered recall to all but eight of the strikers. The eight are Mike Branchcomb, Joe Dority, Rocky Eslinger, Dan Hamon, Ricky Hamon, Fred Hawkins, Billy Hughes, and Theodore Wallace. A ninth striker, Willie Underwood, was offered recall, but not to a job equivalent to that he held before the strike. He declined. During the strike, Respondent hired permanent replacements for many of the strikers. Even so, applying the recall-by-seniority formula generally followed by Respondent, six of the above nine—Branchcomb, Dority, the two Hamons, Hughes, and Wallace—would have been offered recall to equivalent jobs on January 14, 1980; Hawkins and Underwood on January 24; and Eslinger on September 8.

The General Counsel contends that the failure to offer recall to these nine on those dates was unlawful. Respondent, as is more fully developed later, asserts that it reasonably withheld offers from the nine because of doubts of their physical fitness, which doubts allegedly derived from their having workers' compensation claims pending against it at strike's end. A 10th striker, Kenton Dugan, also had a worker's compensation claim pending at strike's end. As will be discussed in greater detail below, he was recalled January 25, after arranging for the withdrawal of his claim, among other things.

Respondent learned toward the end of the strike that seven of the nine had filed claims against it in which they had cited on-the-job injuries incurred before the strike. It learned after the strike, coincident with Underwood's refusal of the nonequivalent job, that he also had filed; and it had known since the May preceding the strike that Branchcomb had filed.[2] Injuries notwithstanding, only Hawkins of the nine was not performing his regular duties when the strike began. Hawkins had not returned to work following an injury October 15.

[1] On October 30, 89 employees were at work, 87 on October 31, 29 on November 1, and 28 on November 2.

[2] Six of the nine initiated claims on the recommendation of William Brogden, attorney, on either October 22 or November 12, 1979, during meetings at the Union's hall. Another, Hawkins, initiated one of the two he advanced immediately after the October 22 union meeting, when Brogden visited him at his home. Another, Ricky Hamon, apparently also initiated his at Brogden's insistence, but under circumstances and at a place not disclosed on the record. Branchcomb was assisted by Respondent's personnel manager, Jim Eby, in the preparation of his claim, evidently acting independently of coworkers. Branchcomb later engaged John Luton, attorney, to represent him concerning his claim.

Workers' compensation claims in Oklahoma are filed with the Oklahoma Workers' Compensation Court on a form entitled "Employee's First Notice of Accidental Injury and Claim for Compensation"—commonly known as Form 3. Employers are represented in these matters by the State Insurance Fund, to which they pay premiums and which compensates successful claimants. The employers are not routinely informed of the pendency of claims against them. They do have a stake in the outcome, however, for their premium rates are influenced by the incidence and severity of work-related injuries among their employees.

On January 10, in the immediate aftermath of the strike, Respondent's personnel manager, Jim Eby, individually interviewed the strikers, ascertaining from each which jobs and shifts would be acceptable, and explaining the rehire procedure. As concerns those known or suspected to have an outstanding workers' compensation claim, Eby asked if they had seen a doctor and directed that they provide him with a copy of any resulting medical evaluation. Eby also discussed with some of them the implications of their having claims outstanding. Thus:

(a) He told Eslinger he "would probably need" a doctor's release before he could be recalled. Eslinger, who had broken a hand the preceding May, replied that he had turned in a release before returning to work in July. Eby countered that he "would need another." Eslinger said he would get one from Kermit Baker, M.D., who had treated his injury on referral from Respondent and had issued the earlier release. Eby responded that that would not be necessary; that Respondent was not recalling anyone who had an outstanding Form 3. Eslinger protested that he long since had returned to his regular duties.

(b) He told Hawkins that, having filed a Form 3, he would have to provide a doctor's release before he would be recalled.

(c) Upon verifying that Hughes had filed a Form 3, he directed him to have his attorney "drop it." Eby added that he could not "guarantee" Hughes' recall, even in that event.

(d) First establishing that Dugan's Form 3 was still pending, Eby told him he would have to "drop it" before he could be recalled, further stating that the "ones that had the Form 3 filed against the Company wouldn't be hired back." Eby also stated that Dugan would need a doctor's release and to release Respondent "of all liabilities" for his injury before he could return.[3]

On January 11, having heard of an opening for which he was qualified, Wallace asked Eby why he had not been recalled. Eby answered that Wallace had filed a Form 3, and that "no one that filed a Form 3 and hired a lawyer would be called back unless they withdrew the Form 3 and fired the lawyer." Wallace asked "what guarantee" he had that he would have a job "a couple of months from" then if he were to withdraw his Form 3. Eby said there were "no guarantees."[4]

On about January 11, as well, Jack Branchcomb, Respondent's maintenance foreman,[5] told Eby that he wanted Hughes recalled to the maintenance crew. Eby replied that Hughes could not be recalled "because of his disability claim." Branchcomb in turn informed Hughes of this, telling Hughes in addition that Respondent's maintenance superintendent, Jim Smith, had referred to the more ardently prounion of Respondent's employees as "troublemakers" and had said that Respondent opposed the recall of those having "anything to do with the union activities . . . in any circumstances."[6]

On January 14, the date Respondent would have offered recall to six of the nine in question had the general recall criteria prevailed, Eby summoned several and perhaps all of the six to his office. These exchanges followed:

(a) Eby asked Dority the extent of his disability, as pronounced by Russell Allen, M.D. Dority and most of the others had chosen Dr. Allen to examine them in support of their workers' compensation claims. Dority replied that it was 30 percent. Eby stated that Dority, before being put "back to work," would have to be examined by a company doctor, would have to "get a discharge from" Dr. Allen, and would have to "get rid of" the attorney handling his claim. Eby also declared that Dority could not be recalled while his claim was "pending."

(b) Eby likewise asked Dan Hamon the extent of his disability. Hamon said that he had not seen Dr. Allen's report and did not know. Eby responded that Hamon would "have to get a release from" Dr. Allen before Respondent "could think of" putting him back to work, and that his workers' compensation claim would "have to be resolved," as well.

(c) Eby told Hughes, upon learning that he had not "dropped" his claim, that there was no work for him "beings" he had not.[7]

(d) Ray Wheeler, plant manager, told Ricky Hamon that he wanted him to "drop" his claim, explaining that

[3] Eslinger, Hawkins, Hughes, and Dugan, respectively, are credited that Eby spoke to them as here related. Eby denied generally telling anyone that withdrawal of the Form 3 was a condition of recall. Rather, according to him, some of the ex-strikers offered to "get rid of" their claims, to which he assertedly said "that is your business"; that, even if they did, he still could not guarantee recall; and that they would still need medical clearance. The four are credited over Eby to the extent that his version conflicts with theirs not only because of weight of numbers, but because Eby at various times during his testimony seemed less interested in serving the truth than in favoring Respondent's side of the dispute, because his version is less plausible than that of the four concerning how the topic of dropping the claims entered the conversations, and because the subsequent handling of Dugan's recall, of which details will follow, belies Eby.

[4] For much the reasons stated in the preceding footnote, Wallace is credited over Eby's denials that Eby ever said withdrawal of the Form 3 and/or the discharge of the lawyer were prerequisites to recall.

[5] Jack Branchcomb is a brother of Mike Branchcomb, one of the alleged discriminatees.

[6] Branchcomb, although concededly having spoken to Smith about recalling Hughes, denied that he mentioned Smith to Hughes, and, by implication if not directly, that Smith said anything of the sort here described. Hughes conveyed greater testimonial sincerity than Branchcomb, and is credited. Smith did not testify.

[7] As mentioned above in fns. 3 and 4, Eby denied generally that he told anyone his claim would have to be dropped and/or his lawyer discharged to be recalled. Dority, Dan Hamon, and Hughes, respectively, are credited that Eby spoke to them as here set forth, the conflicts having been resolved against Eby for the reasons earlier advanced.

Hamon otherwise would not "be able to get any work anywhere else, except two- or three-dollar jobs." Hamon showed Wheeler two passages from a booklet entitled "Layman's Guide to Workers' Compensation," both making the point that "the employer violates the law if he fires or discharges an injured worker for filing a Workers' Compensation claim." Wheeler countered that Respondent's lawyers "knowed" what they were doing—an allusion to his understanding that the decision not to recall those with pending claims had been lawyer-recommended.

Wheeler then invited Eby to join in. Eby, after examining the passages to which Hamon had referred, stated that he wanted Hamon to "drop" his claim. Hamon asserted that it was his "right to file," prompting Eby to announce that there was "no way in the world" he would "even consider" recalling Hamon unless he dropped his claim. Eby added that Hamon also would need a "release from" Dr. Allen, who had examined him in support of his claim. Eby then asked the extent of Hamon's disability, as assessed by Dr. Allen. Hamon said he did not know, and Eby declared there was "no way in the world" Respondent would consider hiring him back if his disability were 30 percent or more.

Eby left at that point, after which Wheeler told Hamon that, if he were to drop his claim, Wheeler "would guarantee" to put him "back to work in a week's time."[8]

Also on January 14, Eby spoke again with Dugan, informing him of an opening and asking if he was interested. To Dugan's affirmative answer, Eby instructed him to send a letter to the attorney handling his worker's compensation claim, with copy to Eby, directing that the claim be dropped. Eby further stated, much as he had on January 10, that Dugan would have to obtain a doctor's release and to sign a release exempting Respondent from liability. Dugan assenting to these conditions, Eby asked if he wanted Respondent to prepare a release. Dugan said he did. Eby also arranged at that time for Dugan to be examined by Dr. Baker.[9]

Dugan thereupon sent a letter to his attorney stating that his injury was "not bothering me now" and that he was "dropping my lawsuit against" Respondent. The letter asked that the attorney send a copy of it to Respondent.

Pursuant to Eby's arrangements, Dugan was examined by Dr. Baker on January 24. Dr. Baker provided Eby with a letter of the same date stating that Dugan had said he had "absolutely no pain and . . . no disability" and feels that he can work starting inmediately"; and that the examination of him revealed "absolutely nothing wrong."

That over, Eby presented Dugan with a release prepared by Respondent's attorney, and had him sign. The release was in this form:

> I, Kenton Dugan, hereby acknowledge on November 12, 1979, I filed a claim for Workers' Compensation claiming a disability as a result of an on the job injury occurring at Green Country Castings Corporation on October 25, 1979, at 5:00 P.M.
>
> I now state without qualification that I was not disabled in any way by the accident on October 25, 1979. I further state that I was not disabled by the October 25th accident or at any time subsequent to the accident and am currently not disabled in any respect.
>
> I did not understand the implication of filing a Workers' Compensation claim at the time I signed the claim, because I have never been disabled as a result of the accident at Green Country Castings Corporation and I do not now claim to be disabled as a result of the accident at Green Country Castings Corporation.
>
> I have voluntarily and without prompting or encouragement from Green Country Castings dismissed my attorney, William Brogden, 5235 North Lincoln, in Oklahoma City, Oklahoma, to handle my Workers' Compensation claim, and instructed Mr. Brogden to withdraw my November 12, 1979, claim.
>
> This statement has been given for the sole purpose of demonstrating that both myself and Green Country Castings are satisfied that I have not been disabled at any time in the past due to an accident occuring at Green Country Castings, and am not presently disabled as a result of any such accident.
>
> I fully understand that I am not guaranteed reinstatement at Green Country Castings as a result of signing this statement and no officer or agent of Green Country Castings has promised or led me to believe that I am guaranteed reinstatement by signing this statement. I further understand that my possible reinstatement at Green Country Castings does not depend on whether or not I have filed or there is pending on my behalf a claim for Workers' Compensation.
>
> I have carefully read this statement and find it correct in all respects.
>
> I have given this statement entirely voluntarily and of my own free will and accord. I have not been promised any benefit or threatened with reprisal as an inducement to get this statement.

Dugan returned to work the next day, Respondent by then knowing that his worker's compensation claim had been withdrawn. On January 25, coincident with Dugan's recall, Eby prepared this memorandum:

[8] Ricky Hamon is credited that the exchange between him, Wheeler, and Eby was substantially as here related. Neither Wheeler nor Eby specifically addressed this incident in his testimony, whereas Hamon's recital was richly detailed, internally consistent, and convincingly delivered.

[9] Dugan is credited that events of January 14 between him and Eby were as here described. Eby, although admitting that he "would think that [Dugan] would be in a more favorable light with the company" if he dropped his claim, denied suggesting that Dugan do so. Eby testified, instead, that Dugan offered to withdraw his claim, whereupon Eby said he could not "guarantee" rehire even so and that it was Dugan's "business." Eby is discredited to the extent that their recitals differ for the reasons he previously has been discredited in cases of similar conflict.

> Mr. Dugan was reinstated to his old job on 1-15-80, he was previously not considered for reinstatement because of his claim of personal disability. He has completely denied any disability now and says he was never disabled—signed statement to that effect. Was examined by Dr. Baker. Baker found no evidence of any physical problems. Individual was reinstated.
>
> J. Eby 1-25-80

As previously mentioned, Underwood was offered a nonequivalent job, which he declined. The offer was by letter dated January 25. Speaking with Eby shortly after receipt of the letter, Underwood told him that he thought the proffered job, on the molding line, was "too heavy." He had been a casting inspector before the strike, but had told Eby on January 10 that he would accept other work. Underwood added that he was among those with a pending workers' compensation claim. Eby replied that, because of the claim, Underwood could not be recalled without a release from Dr. Allen, who had examined him in support of his claim. Eby continued that "lots of them"—presumably a reference to the others with claims outstanding—would have to get releases before Respondent would "hire them back."

On January 28, while at the plant to get his W-2 form, Hughes remarked to Eby that Respondent had recalled "quite a few" of the strikers, and asked when the rest would be recalled. Eby answered, "Anyone that filed a Form 3 . . . would not be called back until the charges were dropped . . . ." Eby then asked if Hughes had arranged for his to be dropped. Hughes said he had not.[10]

Similarly, on about February 20, Russell Powell, an employee not involved in the strike, asked Eby why Dority, Ricky Hamon, and some of the others had not been recalled. Eby replied, "They had filed a Form 3 against the Company."[11]

Branchcomb's Form 3, dated May 11, 1979, cited a leg injury incurred May 4. He was examined in support of his claim by Paul Atkins, M.D., on September 26, 1979; and, on behalf of the State Insurance Fund, by Worth Gross, M.D., on November 29. Dr. Atkins expressed the opinion, in his examination report, that Branchcomb had suffered "a 13% of total physical impairment to the whole man." Dr. Gross stated in his report that Branchcomb had realized "residual physical impairment of ten percent to the left leg below the knee," and that further medical care was not indicated. A hearing on Branchcomb's claim was held March 18, 1980, resulting in a judicial determination dated April 16 that he had a "25 percent permanent partial disability to the left foot."[12]

Dority's Form 3, dated October 22, 1979, cited a back injury incurred September 25. He was examined in support of his claim by Dr. Allen on December 7, 1979; and, on behalf of the State Insurance Fund, by Dr. Gross on February 4, 1980. Dr. Allen's examination report gave the opinion that Dority had experienced "30% permanent partial impairment to the whole person." Dr. Gross reported that Dority "has a four percent physical impairment to the body as a whole," and that further treatment was not indicated. A hearing on Dority's claim was held March 13, 1980, resulting in a judicial determination dated March 18 that he had an "8 percent permanent partial disability to the body as a whole."

Eslinger's Form 3, dated November 12, 1979, cited the broken hand incurred in May 1979. He had submitted another Form 3 for the same injury in May. He was examined in support of his claim by J. Dan Metcalf, M.D., on December 6, 1979; and, on behalf of the State Insurance Fund, by H. J. Freede, M.D., on about January 21, 1980. Dr. Metcalf stated in his examination report that Eslinger had suffered "30% permanent impairment to the right hand." Dr. Freede's report observed that Eslinger's "period of temporary disability . . . is terminated"; that "no further medical treatment . . . [or] . . . lost time is indicated or needed"; and that Eslinger "has no permanent [disability] of his hand . . . . ." A hearing on Eslinger's claim was held March 13, 1980, resulting in a judicial determination dated March 18 that he had a "10 percent permanent partial disability to the right hand."

Dan Hamon's Form 3, dated November 12, 1979, cited a back injury incurred October 31. He was examined in support of his claim by Dr. Allen on November 30; and, on behalf of the State Insurance Fund, by J. J. Maril, M.D., on January 8, 1980. Dr. Allen reported that Hamon had realized a "20% permanent partial impairment to the whole person." Dr. Maril stated that Hamon's "temporary total disability has long ended," that there was "no permanent impairment of the whole man," and there was "no indication for any treatment." A hearing on Dan Hamon's claim was held March 19, 1980, resulting in a judicial determination dated March 20 that he had an "8 percent permanent partial disability to the body for the back injury."

Ricky Hamon's Form 3, dated October 25, 1979, cited a back injury incurred October 23. He was examined in support of his claim by Dr. Allen on January 9, 1980; and, on behalf of the State Insurance Fund, by Dr. Freede on about February 14. Dr. Allen expressed the opinion, that Hamon had experienced a "40% permanent partial impairment to the whole person." Dr. Freede reported that there was "no permanent impairment" and that "this patient is able to work." A hearing on Ricky Hamon's claim was held April 17, 1980, resulting in a judicial determination dated August 22 that he had a "21

[10] Hughes is believed that Eby spoke to him in this manner, Eby's general denial that he conditioned recall on the dropping of claims previously having been discredited.

[11] Powell is credited concerning this conversation. Eby's testimony about it graphically revealed chinks in his credibility. He first denied telling Powell that anyone's recall had been withheld because of an outstanding Form 3, embellishing that he said that Dority and Ricky Hamon had not been recalled "because we suspected they had a permanent disability and were still evaluating their condition and we would make a decision on that." Later, however, Eby admitted that he could not "specifically remember exchanging words" with Powell about Hamon and Dority; that he had no "clear recollection" of the conversation; that he did not "recall talking about it, honestly"; and, finally, that the conversation was "about a horse race."

[12] The judicial determinations of disability of Branchcomb and the two Hamons, and the final disposition of Underwood's claim, as set forth herein, are based on information obtained from the Oklahoma Workers' Compensation Court, of which official notice is taken.

percent permanent partial disability to the body as a whole."

Hawkins filed two Form 3's, both dated October 22, 1979, one citing a broken hand incurred the preceding June, and the other a back injury incurred October 15. He was examined in support of his claims by Dr. Allen on January 8, 1980; and, on behalf of the State Insurance Fund, by Dr. Freede on about February 18 and by Dr. Gross on March 3. Dr. Allen stated in his report that Hawkins had suffered a "30% permanent partial impairment to the whole person." Dr. Freede reported that there was "no permanent impairment of the whole man" and that "this patient is able to work." Dr. Gross noted in his report that there was "no residual disability" and that Hawkins could "carry out" his ordinary job duties "at this time." A hearing on Hawkins' claims was held April 15, resulting in a judicial determination dated May 12 that he had a "20 percent permanent partial disability to the body as a whole," and in a determination dated May 14 that he had a "15 percent permanent partial disability to the right hand."

Hughes' Form 3, dated November 12, 1979, cited a back reinjury incurred October 29. He was examined in support of his claim by Dr. Allen on December 18, 1979; and, on behalf of the State Insurance Fund, by Gary Massad, M.D., on March 5, 1980. Dr. Allen reported that Hughes had experienced a "30% permanent partial impairment to the whole person." Dr. Massad stated in his report, "I do not feel that the patient has any permanent partial impairment of function," and that Hughes "can perform any occupation he so chooses." A hearing on Hughes' claim was held April 8, resulting in a judicial determination dated April 10 that he had a "10 percent permanent partial disability to the body as a whole."

Underwood's Form 3, dated October 22, 1979, cited a back injury incurred in November 1978. He was examined in support of his claim by Dr. Allen on December 7, 1979; and, on behalf of the State Insurance Fund, by Dr. Gross on February 25, 1980. Dr. Allen opined in his report that Underwood had suffered a "30% permanent partial impairment to the whole person." Dr. Gross reported a "residual physical impairment of ten percent to the body," adding that Underwood could "return to his occupation at this time," but with the expectation "that he will reinjure his back from time to time." A hearing on Underwood's claim was held March 17, after which a settlement was reached before a judicial determination could issue. The settlement document does not specify the extent of disability.

Wallace's Form 3, dated November 12, 1979, cited a back injury incurred in October 1979. He was examined in support of his claim by Dr. Allen on December 18, 1979; and, on behalf of the State Insurance Fund, by Dr. Gross on March 10, 1980. Dr. Allen's report stated that Wallace had realized a "30% permanent partial impairment to the whole person." Dr. Gross reported that Wallace "has no residual physical impairment" and "can resume ordinary manual labor at this time." A hearing on Wallace's claim was held June 10, resulting in a judicial determination that he had a "5 percent permanent partial disability to the low back."

In late January 1980, Eby began to obtain copies of the foregoing medical reports from the files of the State Insurance Fund. As he received the reports, he referred those submitted in support of the claims--i.e., those depicting the claimants as most seriously disabled—to Dr. Baker, whom Eby termed "our company physician," allegedly requesting that Dr. Baker give his "expert opinion," based on the information they contained, of the claimants' "continuing ability to perform" their prestrike jobs. Eby testified that he chose not to provide Dr. Baker with the reports submitted on behalf of the State Insurance Fund because he felt a second determination of little or no disability as concerns a given claimant would be duplicative and thus serve no purpose.

Dr. Baker's first written response, regarding Hughes and dated January 28, 1980, stated in part:

> I would not recommend hiring a new employee with these types of disability, nor would I recommend returning to work any employee with this much disability.

Eby in turn advised Hughes, by letter dated February 15, that Dr. Allen's report concerning him had been submitted "to our consulting physician for his opinion"; that "this consulting physician has recommended that we not assign heavy work to any person with your type of disability"; that "there is presently no light work available in any bargaining-unit classification"; and that, "therefore, there is no likelihood of your reemployment here in the foreseeable future."

Dr. Baker's written opinions with respect to the others, dated February 19 (Underwood), March 6 (Eslinger), March 7 (Branchcomb), March 18 (Dority, Dan Hamon, Ricky Hamon, Wallace), and March 19 (Hawkins), likewise recommended against reemployment; and, except for Underwood, were quickly followed by letters from Eby to the affected persons identical to that sent Hughes.

Although by then well into the process of eliciting Dr. Baker's opinions, based on the medical reports submitted in support of the several claims, and indeed already having sent letters to three of the nine in question[13] holding forth no hope of recall assertedly in reliance on Dr. Baker's recommendations, Eby sent letters to the doctors who had rendered those reports—Atkins, Metcalf, and Allen—on March 13 and 14, requesting further information about their respective examinees. Eby testified that he did this because he did not think their original reports, although the sole bases for Dr. Baker's opinions, dealt adequately with the examinees' abilities to perform their jobs or with their susceptibilities to further injury. He added that these letters were lawyer-drafted and were occasioned by Respondent's decision—prompted to some extent by the pendency of the present charge—to observe "a more circumspect procedure."

The letters, all identical, first stated that the doctor's evaluation "did not purport to deal with either the specific nature of the activity or activities for which the ex-

[13] The three being Hughes on February 15, Branchcomb on March 11, and Eslinger on March 11.

aminee now has this reduced ability, or with the need to reduce or eliminate any specific activity or activities of the examinee to prevent future aggravation or avoid discomfort and pain." They continued that, based on the evaluation, "we assume he [the examinee] suffers a substantial reduction of actual ability to engage in" 16 designated activities, including lifting; climbing; repeated or prolonged bending, stooping, squatting, and overhead reaching; prolonged standing, sitting, and walking; and using hammers weighing two or more pounds, vibrating tools, and certain hand tools. The letters concluded that, receiving no response from the doctor within 2 weeks, "we will assume that you find no fault with our assumptions."

Doctors Atkins and Metcalf did not reply concerning their respective examinees, Branchcomb and Eslinger. Regarding the others, Dr. Allen replied by letter dated March 25, stating that, while a detailed response of the sort called for by Eby's letters would entail a fee well over the $50 authorized in those letters, he did not "in any way agree with your [Eby's] assumptions concerning the limitations on ability to work and carry out the activities described in your form." Eby in turn asked by letter that Dr. Allen prepare the requested evaluation of Hughes, but that he first "notify me of a reasonable estimate of the final fee." Dr. Allen answered that he had "no intention of haggling over" his fees, and that each of the reports "might well exceed" $200. There was no further communication between Respondent and Dr. Allen.

Eby, in his testimony, denied that recall was withheld from any of the nine because of participation in the strike or having filed a Form 3. Regarding the Form 3's, he testified:

> The claim only served one purpose to me, that was to put me on notice that the individual was claiming a permanent disability, that is all it did.

Eby added:

> If I would have had no reason to suspect that they had or were claiming permanent disabilities, they certainly would have been reinstated without any question.

In fact, none of the nine claimed permanent disability on his Form 3. In answer to the question on the form, "Is the injury likely to be permanent in nature?," Branchcomb said "no," as did Eslinger on his form dated May 24. Eslinger on his later form, and all the others, replied "unknown." Dugan, incidentally, likewise replied "unknown." Eby asserted, nonetheless, that the nine informed him "one way or another . . . verbally or written," that "they claimed to have some sort of permanent partial disability."

Eby elaborated that, since all but Hawkins had "come back to work and were performing their job" before the strike, he was given to "assume that something has changed" in their health because of—except for Branchcomb—their later filing of Form 3's. Eby averred that Eslinger had given him further reason to believe "something has changed" by his filing of the second Form 3, both because Eslinger already had received compensation for temporary disability pursuant to the first filing, and because he answered "unknown" instead of "no" in response to the aforementioned question on his later Form 3. Finally, Eby went on, Dority "put us on notice" on January 10 "that he was claiming a permanent disability." Dority, although fixing the date as January 14, admittedly told Eby of Dr. Allen's conclusion that he had suffered a 30-percent disability.

Eby testified that any striker claiming permanent disability, "no matter how small or how minor," was required to establish through a doctor that he was physically able to return to work. He asserted that Respondent was "forced into treating these individuals this way due to past practice," contending that such a practice was "boldly stated" in the recently expired bargaining contract. Eby testified elsewhere, however, that Respondent was insisting on greater proof of the allegedly injured strikers' fitness "because . . . these employees had not been actively employed by us for ten weeks"; and that Respondent only recently had "tightened" its "standards" regarding the hire and retention of physically suspect people because of "the rather staggering financial weight" of its workers' compensation premiums.[14]

As if to give credence to and legitimize the purported tightening of hiring and retention standards, Eby testified that a safety consultant had recommended in 1978 or 1979 that Respondent strive to eliminate accident-prone employees; and that Respondent, screening "heavily" in answer to that recommendation, had reduced 1979 accidents to one-half the 1978 level, with yet another reduction, of 15 percent, in 1980. Plant Manager Ray Wheeler, however, gave a different explanation for the improved accident record—better machinery and equipment. He testified that, after the strike's onset, Respondent "took a lot of steps and spent a lot of money to make it a safer place to work," and that there had been "considerably less" injuries as a result.

The contract provision to which Eby referred as the touchstone of past experience—and which Charles Yoh, company president, testified "is still company policy" despite the contract's expiration—stated:

> [T]he company may require, where cause exists, that an employee take a medical examination to determine the continuing physical fitness of the employee to perform bargaining-unit work.

Respondent concededly made no attempt under this so-called policy for any of the nine in question to undergo a medical examination. Asked why not, Eby replied, "We didn't, what else can I say." Eby ventured that, had Eslinger dropped his claim before the workers' compensation judge had found him to be permanently disabled, Respondent "probably" would have had him examined by Dr. Baker before recalling him.

Dority and Hughes were treated for their injuries by Dr. J. C. Johnson, a chiropractor acknowledged by Eby to be a "recognized company physician." Dr. Johnson issued forms to both on January 14, 1980, releasing them

[14] As mentioned earlier, an employer's workers' compensation premium rates are affected by its accident experience.

to return to work. Eby, although admitting that employees in the past routinely had been permitted to return on the strength of Dr. Johnson's releases, testified that the Dority and Hughes situations were different "because we had reason to believe that something had happened to change the condition of their physical condition since the last time we had seen them." Eby added that, had Dr. Johnson examined Dority and Hughes the day before the strike ended, Respondent would have accepted his evaluation, "certainly."

Similarly, E. P. Couch, M.D., Ricky Hamon's treating doctor, issued a release to him on December 28, 1979, and wrote Respondent on January 25, 1980, that he had examined Hamon on that date and found "no evidence of any permanent impairment"; and Dr. Jacky Dunn, an osteopath who had treated Wallace, provided him with a release on January 21, 1980. Eby testified that Drs. Couch and Dunn, along with Dr. Baker, were Respondent's regular doctors at the end of the strike. The record seemingly provides no explanation for Respondent's failure to honor Dr. Couch's release of Hamon and Dr. Dunn's release of Wallace.

Dan and Ricky Hamon were picket captains during the strike, and each of the nine in question performed picket line duty. Dority, Ricky Hamon, and Hughes served as employee-members of the Union's bargaining committee in the negotiations preceding the strike. Ricky Hamon was the Union's chief steward at the time of the strike and for several years before, being involved in an estimated 500 grievance matters in that capacity. Dority was a steward for a year or so, until January 1979, handling several grievances as such. Hughes acted as a steward's helper for a time, assisting in the preparation of a few grievances.

B. *Conclusion*

It is concluded that Respondent violated Section 8(a)(3) and (1) as alleged by failing to offer recall to the nine in question.

The Supreme Court has said:

> [U]nless the employer who refuses to reinstate strikers can show that his action was due to "legitimate and substantial business justifications," he is guilty of an unfair labor practice.[15]

One such justification "is when the jobs claimed by the strikers are occupied by workers hired as permanent replacements during the strike in order to continue operations."[16]

In the present case, Respondent has persisted in its refusal to recall the nine in question even after the departure of permanent replacements, contending that it is justified in doing so because of doubts of their physical fitness. While genuine concerns about an ex-striker's health doubtless can justify a refusal to recall in some circumstances, it is concluded that such justification did not obtain in the present case. Among the bases for this conclusion are these:

(a) Eight of the nine had recovered sufficiently from their injuries to be working before the strike. Even according good faith to Eby's stated assumption "that something has changed in their conditions" because of the subsequent filing of claims, such an assumption was unwarranted by any objective measure. Moreover, that he truly had formed and acted on this assumption was singularly unconvincing; indeed the record suggests that the idea came from Respondent's lawyers and derived from purely strategic considerations.

(b) Four of the nine received medical releases to return to work during the pendency of their claims. Respondent disregarded them even though they came from doctors with whom it regularly dealt and ordinarily would have been honored without cavil. Eby's explanation for this disregard, to the extent that he made an attempt, was limp and totally unpersuasive.

(c) Although testifying at one point that Respondent was "forced into treating these individuals this way due to past practice," Eby conceded that they were being held to a more rigorous standard "because . . . these employees had not been actively employed by us for ten weeks." Even if Eby were to be believed that doubts engendered by the 10-week absence were the true reason for imposing a different standard, and he is not, that is not a legitimate reason for truncating strikers' recall rights.

(d) The letters of Dr. Baker recommending against rehire, on which Respondent avowedly has placed major reliance in withholding offers of recall,[17] did not come into existence until well after all but Eslinger would have received offers under the recall formula generally followed.

In sum without looking into the issue of motivation, Respondent has failed to supply "legitimate and substantial business justifications" for failing to recall the nine, and thus violated the Act as alleged.

The result would be no different even if Respondent's proffered justifications were deemed to be facially adeguate, for an analysis of the evidence exposes them as pretextuous, Respondent's true motivation in failing to recall the nine being their protected union and workers' compensation activities.[18] Thus:

(a) Because of their picket line activities, all nine were prominently identified with the strike. Beyond that, three had served on the Union's bargaining committee immediately before the strike; one for several years had been the Union's chief steward, being involved in hundreds of

[15] *N.L.R.B.* v. *Fleetwood Trailer Co.*, 389 U.S. 375, 378 (1967).

[16] *Id.* at 379.

[17] As is argued in Respondent's brief: "One universal that emerges from the numerous Board cases . . . is the rule that the employer is entitled to rely upon the advice of its expert consultant, be it medical or industrial insurance consultant."

[18] That the filing of a workers' compensation claim is a protected activity is established by *Krispy Kreme Doughnut Corp.*, 245 NLRB 1053 (1979). Although the Board's decision was overruled in *Krispy Kreme Doughnut Corp.* v. *N.L.R.B.*, 635 F.2d 304 (4th Cir. 1980), it remains controlling herein. E.g., *Los Angeles New Hospital*, 244 NLRB 960, 962, fn. 4 (1979). Moreover, whereas the claim in *Krispy Kreme* was filed by an employee acting alone, those of six of the nine in the present case were initiated concertedly in the context of union meetings. See fn. 2 *supra*. It thus would seem likely, even applying the Fourth Circuit's more narrow view of protected activity, that at least those six were within the scope when pursuing their claims.

grievance matters; and two others also had performed steward functions.

(b) Jim Smith, Respondent's maintenance superintendent, was quoted by a fellow supervisor as calling the more ardent union supporters "trouble-makers," and as saying that Respondent opposed the recall of those having "anything to do with the union activities . . . in any circumstances."

(c) Eby's testimony that Respondent was insisting on greater proof of the allegedly injured strikers' fitness "because . . . these employees had not been actively employed by us for ten weeks" was the functional equivalent of his saying the more stringent standards were imposed because the nine had participated in the strike.

(d) Eby stated time and again, in substance, that those with claims pending would not be recalled.

(e) Wheeler told Ricky Hamon on January 14 that, if he would "drop" his claim, Wheeler "would guarantee" his being recalled "in a week's time."

(f) Eby admitted that he "would think that [Dugan] would be in a more favorable light with the company" if he were to withdraw his claim, and Dugan in fact was recalled following its withdrawal.

(g) That Respondent's stated misgivings about the fitness of the nine were disingenuously advanced, to circumvent their recall rights, shows in the manner it purported to ascertain their states of health. For instance, although assertedly seeking Dr. Baker's "expert opinion" of their "continuing ability to perform" their prestrike jobs, Eby provided him only with those medical reports portraying the claimants as most seriously disabled—reports admitted by Eby in his testimony to be inadequate in that regard.

Respondent's predisposition to frustrate recall rights rather than get to the truth likewise is revealed by Eby's lawyer-drafted March 13 and 14 letters to Drs. Atkins, Metcalf, and Allen, with their self-serving declarations that, absent responses within 2 weeks, Respondent would "assume" that the doctors found "no fault with our assumptions" of substantial disability.

That Respondent was not interested in the true condition of the nine also is disclosed by its failure to seek to have them examined in accordance with "company policy" as reflected in the one clause of the expired contract, and by Eby's default—"We didn't, what else can I say"—when asked to explain this failure.

(h) A further indicator of unlawful motive was Eby's perceived need to fabricate during critical phases of his testimony. His denial that he ever said withdrawal of the claims was a condition precedent to recall flies in the face of the overwhelming weight of evidence; his radically shifting testimony regarding his February 20 conversation with Russell Powell[19] was a monument to expedience; his remark that he assumed "that something has changed in" the fitness of the nine because of the filing of the claims was patently unbelievable; and his statement that the nine had informed him "one way or another" that they "claimed to have some sort of permanent partial disability" was devoid of evidentiary support, convincing or otherwise, except perhaps as concerns Dority and Eslinger, and so must be concluded to have been of after-the-fact contrivance.

Eby additionally discredited himself and Respondent's motivation by the inconsistency of his first testifying that Respondent was "forced into treating these individuals this way due to past practice," only to concede that a more rigorous standard had been instituted; by the illogic of his explanation for not providing Dr. Baker with all of the medical reports at his disposal—that a second determination of little or no disability would be duplicative and thus serve no purpose; and by his lame-to-nonexistent explanations for disregarding the medical releases obtained by four of the nine.

Finally, Eby was discredited in his citation to Respondent's improved accident rate as giving credence to and legitimizing the purported tightening of standards for hire and retention, Wheeler having testified that the improved rate was the result of heavy expenditures for machinery and equipment.

IV. THE ALLEGEDLY UNLAWFUL NO-SOLICITATION RULE

A. *Evidence*

On January 10, 1980, before Eby began to interview the ex-strikers, Roy Hawkins, an official of the Union, and Ricky Hamon, as chief steward, met with officials of Respondent. During the meeting, Charles Yoh, company president, declared that there was to be no "harassment" by returning strikers of striker-replacements, or vice versa; and that "there would be no discussion of unions at any time on the company property." Hamon asked if this meant "before and after work and during all times." Ray Wheeler, plant manager, replied that it meant "any time on the company property."[20]

Later in the day, incidental to the Eby interviews, Wheeler announced a similar prohibition to some of the interviewees. Thus:

(a) He told Joe Dority that, when recalled, he was not to "talk union talk to the new [i.e., striker-replacement] employees," saying that it would constitute "harassment." Dority asked if the ban would apply during breaks, lunch periods, and before and after work. Wheeler answered that it would apply "on company property," and that those violating it would be "disciplined or discharged."

(b) He advised Dan Hamon that there was not to be "any harassment between the fellow employees . . . during lunchtime, break time, or any other time . . . on Green Country's land or the property," and that those not complying would be disciplined or discharged.

(c) He warned Billy Hughes that, if recalled, he was "under no circumstances . . . [to] . . . talk union shop on company premises." Hughes asked what about "before work, breaks, dinner, and otherwise." Wheeler

[19] Which testimony is summarized above in fn. 11.

[20] This is Hawkins' credited rendition. Wheeler, although testifying that he instructed Respondent's supervisors to tell the employees "not to discuss the Union during working hours," denied telling employees they were not to raise the subject anywhere on the premises or during breaks. Yoh admitted advising Hawkins and Hamon, "in the area of harassment," that "the returning strikers . . . were to keep closed mouths at all times while on the company property, and not to discuss the Union."

replied, "Nowhere will you state anything about the Union"; and that, if he did, he would "more than likely be discharged."

(d) He cautioned Willie Underwood that, if recalled, he would be dismissed if he talked "to any of the employees" about the Union.[21]

In addition, Eby told Theodore Wallace, during his January 10 interview, that he was not "to talk to any of the employees about the Union" if he were recalled, and that he would be "fired immediately" if he did.

Wheeler and Eby were acting on Yoh's instructions in so informing the ex-strikers. Yoh's professed reason is that he had heard reports of and seen striker misconduct, and wished to forestall poststrike repetition. Counsel for the General Counsel concedes that "some misconduct" during the strike would have "justified the company in issuing some kind of a prohibition against harassment after the strike," but nevertheless contends that Respondent went too far.

B. *Conclusion*

Respondent plainly intended to and did forbid talk about the Union at any time on company premises. While production considerations can legitimize restrictions on union talk in some circumstances, Respondent has provided no convincing evidence—the strike misconduct notwithstanding—that the disruptive potential was of an imminence and magnitude in this instance justifying so sweeping a ban.

It is concluded, therefore, that the ban violated Section 8(a)(1) as alleged.[22]

CONCLUSIONS OF LAW

1. By failing to offer equivalent job reinstatement to Mike Branchcomb, Joe Dority, Dan Hamon, Ricky Hamon, Billy Hughes, and Theodore Wallace on January 14, 1980, to Fred Hawkins and Willie Underwood on January 24, 1980, and to Rocky Eslinger on September 8, 1980, as found herein, Respondent violated Section 8(a)(3) and (1) of the Act.

2. By announcing a rule prohibiting employees from engaging in union-related conversation on nonworking times in nonworking areas, as found herein, Respondent violated Section 8(a)(1) of the Act.

ORDER[23]

The Respondent, Green Country Casting Corporation, Muskogee, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to accord all economic strikers the reinstatement rights to which they are entitled.

(b) Announcing or maintaining a rule prohibiting employees from engaging in union-related conversation on nonworking times in nonworking areas.

(c) In any like or related manner interfering with, restraining, or coercing employees in their exercise of rights under the Act.

2. Take this affirmative action:

(a) Offer to Mike Branchcomb, Joe Dority, Rocky Eslinger, Dan Hamon, Ricky Hamon, Fred Hawkins, Billy Hughes, Willie Underwood, and Theodore Wallace immediate and full reinstatement to their former jobs, or, if such jobs no longer exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges; and make them whole, with interest, for any loss of earnings resulting from the failure to offer such reinstatement to Branchcomb, Dority, both Hamons, Hughes, and Wallace on January 14, 1980, to Hawkins and Underwood on January 24, 1980, and to Eslinger on September 8, 1980.[24]

(b) Rescind the rule prohibiting employees from engaging in union-related conversation during nonworking times in nonworking areas.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under the terms of this Order.

(d) Post at its plant in Muskogee, Oklahoma, copies of the attached notice marked "Appendix."[25] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[21] Dority, Dan Hamon, Hughes, and Underwood, respectively, are credited that Wheeler spoke to them in this fashion. Wheeler's testimonial assertion that he never told employees not to talk about the Union anywhere on the premises or during breaks was unconvincing in the face of the numbers of employees testifying to the contrary and Yoh's admitted remark to Hawkins and Hamon set forth in the preceding footnote.

[22] *American Commercial Bank*, 226 NLRB 1130 (1976). The no-talk ban in *Stone & Webster Engineering Corporation*, 220 NLRB 905 (1975), found by the Board to be permissible, was markedly less expansive than that now in issue.

[23] All outstanding motions inconsistent with this recommended Order hereby are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[24] Backpay is to be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest to be computed as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[25] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Board."